

Witness White identified Emery's notice to Frank Fitzek. It indicated that management (in accordance with Article III(d) of union contract) would require 24-hour notice to the company before the UMWA could enter the mine property (Tr. 190, 191; UMWA Ex. 4). White gave a copy of the notice to Rabbitt the afternoon of April 15 (Tr. 191).

Emery maintained two clearly marked sign-in, sign-out books. One says "Company Visitor Release", the other says "Non-Company Visitor Release" (Tr. 192, 193). No portion of the text was obscured by the punch holes or the bar (Tr. 193). An hour before he testified White had verified the condition of the books with his secretary (Tr. 194).

Prior to April 15, White had never discussed § 103(f) with management or members of the local union (Tr. 197). White construed § 103(f) to relate exclusively to employees of the mine (Tr. 198).

About mid-March White first became aware of the waiver policy. He was advised of it by Dave Lauriski and Stan Rajski (Emery's director of security) (Tr. 199, 213).

Under Emery's policy a visitor is any non-employee or federal or state inspector at the mine (Tr. 199).

On April 15 Rabbitt signed under the old release policy. That form shows a check number. The visitor retains the brass tag with a number stenciled into it (Tr. 201; Contestant Ex. 4). Its purpose is to identify the persons in the mine (Tr. 202). The check-in, check-out procedure is mandated by federal law (Tr. 202).

White did not know on April 15 but he agreed that the definitions in 30 C.F.R. Part 40 [40.1(b)(1)] defines a representative of miners as any other person or organization which represents two or more miners at a coal or other mine (Tr. 206, 207).

White outlined, in detail, his previous mining experience (Tr. 208-210).

The contract provision authorizing access for the international safety and health representatives does not contain any reference to a 24-hour notice (Tr. 211). The only notice provision in the contract provides as follows: "The committee shall give sufficient advance notice of the intended inspection to allow a representative of the employer to accompany the committee" (Tr. 211). The safety and health committee makes regular monthly inspections under the contract (Tr. 212).

The contract further provides: the provisions of this section are in no way intended to impair or to waive any